

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC**

In the Matter of)	
)	
PAGING COALITION and)	CC Docket No. 01-346
AMERICAN ASSOCIATION OF)	
PAGING CARRIERS)	
)	
Request for Declaratory Ruling that)	
Termination by Verizon of Type 3A)	
Interconnection Service Would Be Unjust)	
and Unreasonable, in Violation of Section 201)	
of the Communications Act, 47 U.S.C. §201,)	
and Otherwise Unlawful)	
To:		The Commission, <i>en banc</i>

THIRD SUPPLEMENT TO PETITION FOR DECLARATORY RULING

THE PAGING COALITION¹ and the AMERICAN ASSOCIATION OF PAGING CARRIERS (“AAPC”), by their attorney, respectfully submit the third supplement to the Petition for Declaratory Ruling (the “Petition”) in the captioned proceeding, in order to (1) advise the Commission that AAPC has joined as a party to the proceeding and has become a co-petitioner herein, and to (2) discuss the impact of the Supreme Court’s recent decision in *Verizon Communications, Inc., et al. v. FCC, et al.*,² on the issues raised in the Petition.

As their third supplement to the Petition herein, the Paging Coalition and AAPC respectfully state:

¹ Central Vermont Communications, Inc.; Datapage, Inc.; NEP, LLC d/b/a Northeast Paging; Karl A. Rinker d/b/a Rinker’s Communications; A. V. Lattamus Communications, Inc.; Mobile Communication Service, Inc.; RAM Technologies, Inc.; Schuylkill Mobile Fone, Inc.; Telepage Communication Systems, Inc. and T&T Communications, Inc. d/b/a West Virginia Paging.

² Nos. 00-511, 00-555, 00-587, 00-590 and 00-602, reported at 122 S.Ct. 1646, 152 L.Ed. 2d 701, 2002 U.S. LEXIS 3559, 70 U.S.L.W. 4396 (Decided May 13, 2002).

Background

The Petition was filed on November 30, 2001, as a result of letters issued by Verizon to paging carriers in its service areas announcing that it would unilaterally terminate all “Type 3A” and comparable interconnection arrangements by November 2002, ostensibly due to the commencement of Local Number Portability (“LNP”) obligations of wireless carriers.³ Citing, among other important considerations, the onerous and costly disruption and hardship to themselves and their customers that would arise from such termination, the Paging Coalition requested in its Petition that the Commission find and declare that Verizon’s termination of such arrangements would be “unjust” and “unreasonable” within the meaning of Section 201 of the Communications Act (the “Act”), 47 U.S.C. §201, and therefore unlawful. The Paging Coalition further requested the Commission to find and declare that such unilateral termination would violate Section 20.11 of the Commission’s rules, 47 C.F.R. §20.11, requiring Verizon and other ILECs to provide the type of interconnection reasonably requested by paging carriers, as well as Section 51.315(b) of the Commission’s rules, 47 C.F.R. §§20.11, 51.315(b), prohibiting Verizon and other ILECs from separating network elements currently combined and provided on an unbundled basis as part of Verizon’s Type 3A offering.

More specifically, in relevant part, the Paging Coalition argued that Verizon’s offering of Type 3A and similar arrangements is subject to the Commission’s plenary interconnection jurisdiction under Sections 332(c)(1)(B) and 201(a) of the Act “to establish through routes . . . and to establish and provide . . . regulations for operating such through routes,”⁴ and that Verizon is obligated to provide such arrangements upon request of a paging carrier pursuant to Section 20.11

³ As explained in more detail in the Petition, Type 3A interconnection permits the public to page customers of the Coalition with a local (seven digit) call anywhere in a LATA served by a Coalition member.

⁴ Petition at pp. 7-8; Reply to Comments at pp. 9-11.

of the Commission's rules.⁵ The Paging Coalition further argued that the offering similarly falls squarely within the Commission's jurisdiction under Section 251(c)(2)(D) of the Act to determine whether the "rates, terms, and conditions" of Verizon's interconnection with paging carriers are "just" and "reasonable".⁶

Verizon opposed the Petition on the theory that Type 3A and similar arrangements are merely a "billing service" which is beyond the Commission's interconnection jurisdiction,⁷ and that the Commission ostensibly has "squarely held" that "'LECs are not obligated . . . to provide [Type 3A and similar] services at all'".⁸ Nonetheless, Verizon stated that it was "exploring whether there are ways in which it might continue [Type 3A and similar] arrangements for paging carriers;"⁹ and it subsequently sent letters dated March 20, 2002, to some carriers stating that "Verizon has decided to continue providing [Type 3A and similar arrangements] to paging carriers, on the same terms that the carriers are currently receiving". Verizon's letter contained the additional condition that a paging carrier may not "port any of its customers' telephone numbers to another service provider". A specimen letter from Verizon was attached to the Second Supplement filed by the Paging Coalition under date of April 5, 2002, which also pointed out that the

⁵ Petition at pp. 10-12. Section 20.11 of the rules was promulgated pursuant to the Commission's interconnection jurisdiction under Sections 332(c)(1)(B) and 201(a) of the Act. *In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services (Second Report and Order)*, 9 FCC Rcd 1411, 1497-1498 (FCC 1994) (hereinafter *CMRS Second Report and Order*).

⁶ Reply to Comments at pp. 12-14.

⁷ Verizon Opposition at pp. 5-7.

⁸ *Id.* at p. 7, citing *TSR Wireless, LLC v. US West Communications, Inc.*, 15 FCC Rcd 11166 (FCC 2000), *aff'd on other grounds sub nom. Qwest Corporation v. FCC*, 272 F. 3d 462 (DC Cir. 2001) (hereinafter "*TSR Wireless*").

⁹ *Id.* at p. 2.

issues raised in the Petition were not moot as a result of Verizon's second letter, and urged the Commission to promptly issue the requested ruling.¹⁰

1. The Controversy and Uncertainty Created for AAPC's Members as a Result of the ILECs' Position on the Legal Status of Type 3A and Comparable Interconnection Arrangements Also Justifies Issuance of the Ruling Requested Herein.

As an initial matter, the Commission should take note that AAPC has joined in the Petition as a co-petitioner along with the Paging Coalition. AAPC is a new national trade association representing paging carriers throughout the United States. AAPC officially organized and commenced operation at its first annual meeting at Myrtle Beach, SC, on May 31, 2002. Additional information concerning AAPC may be found at its web site www.pagingcarriers.org.

Many of AAPC's members utilize Type 3A or comparable interconnection arrangements as part of their service offerings to their customers. These arrangements are provided not only by Verizon, but other ILECs as well, and they are crucially important to the efficient operation of AAPC member networks. At the same time, because Verizon and other ILECs continue to insist that the offering of Type 3A and comparable arrangements are entirely discretionary on the ILECs' part, AAPC members operate under the existing and continuing threat that Verizon or any of the other ILECs will terminate the offering at any time, just as Verizon threatened to do in October 2001 and backed down from doing so only because this Petition remained pending before the Commission.

Moreover, because Verizon and the other ILECs do not acknowledge that Type 3A and comparable arrangements are within the scope of the Commission's jurisdiction over "interconnection" and "network elements" which must be "unbundled," within the meaning of Section

¹⁰ Verizon filed a belated response to the Second Supplement under date of June 4, 2002, in which it argued that the Petition is moot as a result of Verizon's March 20 letter. Verizon's contention is, of course, flatly belied by its continued insistence in the same document that Type 3A arrangements "are not interconnection arrangements at all" and that "ILECs are not obligated . . . to provide such services at all." Response of Verizon, June 4, 2002, at 2 & n. 4.

251(c) of the Communications Act, AAPC members are charged prices for such arrangements that do not conform to the pricing standards established in Section 251(d) of the Communications Act. That is, because the ILECs do not regard Type 3A and comparable arrangements as interconnection or unbundled network elements, AAPC members are vastly *overcharged* for such arrangements due to the ILECs' monopoly power over their provision to paging carriers and their consequent ability to charge whatever the market will bear. AAPC members thus continue to pay unlawful charges for Type 3A and comparable arrangements as a direct result of the uncertain legal status of such arrangements under the Communications Act and the ILECs' misinterpretation of the Commission's *TSR Wireless* decision.

Furthermore, as pointed out in the Reply to Comments filed by the Paging Coalition on February 4, 2002, state utility commissions either refuse to afford the protections of Sections 251 and 252 of the Communications Act to Type 3A and comparable arrangements, or, when they attempted to do so, the decision was reversed by the District Court on a twisted interpretation of the Commission's *TSR Wireless* decision. *See* Reply to Comments at p. 17. One or more AAPC members have been directly and adversely affected by the refusal of the state commissions to apply the protections of Section 251 and 252 of the Act to Type 3A and comparable arrangements. Accordingly, AAPC is properly joined as a co-petitioner in this proceeding; and there plainly is a live and continuing controversy between members of AAPC and the ILECs concerning the status of Type 3A and comparable arrangements which this Commission can and should resolve by issuing the declaratory ruling requested herein.

2. The Supreme Court's Decision in *Verizon Communications, Inc.* Supports the Declaratory Ruling Requested Herein.

On May 13, 2002, as part of its *Verizon Communications, Inc.* decision, the Supreme Court reinstated Sections 51.315(c)-(f) of the Commission's rules. Petitioners respectfully point out that this decision likewise supports issuance of the declaratory ruling requested herein.

The Petition pointed out (at pp. 13-16) that Type 3A and comparable interconnection arrangements actually are a combination of the shared transport, dedicated transport, local circuit switching and, as necessary, local tandem switching network elements, which ILECs provide to paging carriers on an unbundled basis. Accordingly, the Petition pointed out that Section 51.315(b) of the rules, which was reinstated by the Supreme Court as part of its *AT&T Corp.* decision,¹¹ forbids ILECs from "de-combining" such arrangements unless the affected paging carrier requests that an ILEC do so. *Id.*

Section 51.315(c) of the rules, reinstated as part of the *Verizon* decision, further provides, in relevant part, that "[u]pon request, an incumbent LEC *shall perform the functions necessary to combine unbundled network elements in any manner . . .*" (Emphasis added).¹² Since Type 3A and comparable arrangements actually are combinations of network elements offered on an unbundled basis to paging carriers, as demonstrated in the Petition, it follows from the reinstatement of Section 51.315(c) that ILECs are now obligated to combine those unbundled network elements *upon request of a paging carrier*. Stated another way, Section 51.315(c) of the rules now requires ILECs to provide shared transport, dedicated transport, local circuit switching and local tandem switching – in the form of Type 3A and comparable arrangements – *upon request* of a paging carrier.

¹¹ *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

¹² Under the rule, the ILEC's obligation to combine is conditioned on technical feasibility and non-impairment of other carriers' access to the ILEC's network, neither of which is implicated by Type 3A and comparable arrangements.

Having to provide Type 3A and comparable arrangements *upon request* of a paging carrier is, of course, the precise antithesis of Verizon's argument that "LECs are not obligated under our rules to provide such services at all.'" Moreover, the result of interpreting and applying Section 51.315(c) to require the offering of Type 3A and comparable arrangements upon request, is precisely the same as the policy promulgated by the Commission in its *CMRS Second Report and Order* and embodied in Section 20.11 of the Commission's rules. That is, as demonstrated in the Petition (at pp. 10-12), the *CMRS Second Report and Order* and Section 20.11 of the Commission's rules dictate that paging carriers and other CMRS providers are entitled to choose the interconnection arrangements they desire to have. As explained above, that is exactly the same result with respect to Type 3A and comparable arrangements dictated by the Supreme Court's reinstatement of Section 51.315(c) of the rules.

Conclusion

Under Section 1.2 of the Commission's rules, 47 C.F.R. §1.2, the Commission may issue a declaratory ruling to "terminat[e] a controversy" or to "remov[e] uncertainty". The record herein correctly and unambiguously reflects that the dispute between the paging industry and the ILECs over the legal status of Type 3A and comparable interconnection arrangements, and as to the proper interpretation of the Commission's *TSR Wireless* decision governing the obligation of ILECs *vel non* to provide such arrangements to paging carriers, is much broader than Verizon's misbegotten attempt to eliminate such arrangements within its own service areas. The resulting controversy and uncertainty affects virtually all ILECs and numerous members of AAPC who are interconnected with Verizon and other ILECs as well. Accordingly, issuance of the declaratory ruling requested by the Paging Coalition remains entirely appropriate and necessary in the

interests of justice; and the Commission should therefore grant the relief requested in the Petition for Declaratory Ruling with all deliberate speed.

Respectfully submitted,

s/Kenneth E. Hardman

Kenneth E. Hardman
MOIR & HARDMAN
1015 – 18th Street, N.W., Suite 800
Washington, DC 20036-5204
Telephone: (202) 223-3772
Facsimile: (202) 833-2416

*Attorney for the Paging Coalition and
American Association of Paging Carriers*

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